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8 U.S. Food and Drug Administration

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 ANIMAL LEGAL DEFENSE FUND,

13 Plaintiff,

14 v.

15 UNITED STATES FOOD AND DRUG
16 ADMINISTRATION,

17 Defendant.

Case 3:12-cv-04376-EDL

**STIPULATION AND ~~[PROPOSED]~~
ORDER RE STAY PENDING APPEAL
DETERMINATION**

1 **STIPULATION**

2 WHEREAS, on January 23, 2019, the Court issued its Findings of Fact & Conclusions of Law
3 (ECF 169) and then entered Judgment (ECF 170), ordering FDA to release, within 30 days, the subject
4 EIRs with the total number of hen houses, the total number of floors per hen house, the total number of
5 cage rows per hen house, and the total number of cage tiers per hen house;

6 WHEREAS, the government's deadline to file an appeal is sixty days from the date of the
7 Court's Judgment, or March 25, 2019 (as March 24, 2019 falls on a Sunday). *See* 28 U.S.C. § 2107(b);
8 Fed. R. App. P. 4(a)(1)(B);

9 WHEREAS, the decision whether to appeal rests with the Solicitor General of the United States,
10 who needs time to consider the issue. *See* 28 C.F.R. § 0.20(b).

11 WHEREAS, defendant FDA has requested an extension of the production deadline, in order to
12 allow the government to consider its appellate options within the congressionally-established timeframe,
13 and plaintiff ALDF has agreed to FDA's request.

14 IT IS HEREBY STIPULATED, by the parties to the action, through their counsel of record that:

15 1. FDA's deadline to release the records ordered in the Judgment (ECF 170) shall be extended
16 to Monday, March 25, 2019.

17 2. In the event that FDA elects to file a Notice of Appeal before that time, FDA's obligation to
18 release the records ordered in the Judgment (ECF 170) shall be stayed pending appeal.

19 Respectfully submitted,

20 Dated: February 5, 2019

21 DAVID L. ANDERSON
22 United States Attorney
23 /s/ Wendy M. Garbers

24 Wendy M. Garbers
Assistant United States Attorney
Counsel for Defendant FDA

25 Dated: February 5, 2019

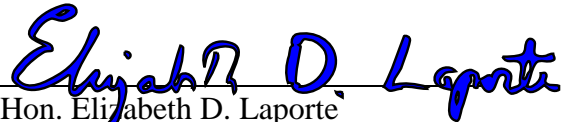
26 /s/ Karen Johnson-McKewan*
27 KAREN JOHNSON-MCKEWAN
28 ORRICK, HERRINGTON & SUTCLIFFE LLP
Counsel for Plaintiff ALDF

1 **In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury*
2 *that each signatory has concurred in the filing of this document.*

3
4 **[PROPOSED] ORDER**

5 Pursuant to Stipulation, IT IS SO ORDERED.

6
7 DATED: February 7, 2019

8 
9 Hon. Elizabeth D. Laporte
10 United States Magistrate Judge
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